



California Fair Political Practices Commission

January 19, 1990

Richard D. Jones
Attorney at Law
690 South Brea Blvd.
Brea, CA 92621

Re: Your Request for Informal Assistance
Our File No. I-89-657

Dear Mr. Jones:

This is in response to your request for advice concerning the duties and responsibilities of City of Westminster staff under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Because your request for advice does not identify a particular decision before your agency, we are treating your request as a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).²

QUESTION

Through the city's deferred compensation plan, staff invests in a development corporation doing business in the City of Westminster. Does this investment create a disqualifying conflict of interest for city staff?

CONCLUSION

Participation in the deferred compensation plan may create a conflict of interest for those members of the staff who have invested \$1,000 or more in the development corporation through the deferred compensation plan. Those staff members are required to disqualify themselves from participating in decisions which would foreseeably and materially affect the development corporation.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

FACTS

The City of Westminster is currently negotiating with IDM Retail Development Corporation (IDM) for the construction of a large retail shopping center within the redevelopment area of the city.

IDM has made a public offering seeking investors for a \$40,000,000 limited partnership. IDM manages the limited partnership and invests the money in retail shopping centers and other projects it develops. As the projects are developed and permanent financing is obtained, the limited partnership investors are paid back. Typically there is a four to six year turn around time period from the time of the initial investment until repayment of the investment. The investors have no knowledge of the specific retail development project in which IDM invests the money. They do not participate in the management of the limited partnership nor control the nature of its investments.

The City of Westminster offers its employees a deferred compensation plan. The employees select their investments from a number of options including the IDM limited partnership. A deferred compensation group makes the investments on their behalf.

Many members of the city staff have exercised the right to defer a portion of their compensation through this plan. Some employees have chosen to invest as much as \$10,000 in the IDM limited partnership through the deferred compensation plan. The investors do not know whether IDM invests any of its \$40,000,000 from the limited partnership in any specific project within the City of Westminster.

You are concerned that these investments may give rise to a disqualifying conflict of interest for city staff negotiating with IDM.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which an official knows or has reason to know he has a financial interest. An official has a financial interest in a decision which will have a reasonably foreseeable material financial effect, different from the effect on the public generally, on the official, a member of the official's immediate family, or on:

Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

Section 87103(a).

Your letter indicates that some members of the city staff have chosen to invest a portion of their deferred income in the limited partnership controlled by IDM. Some of these investments exceed \$1,000 dollars. The issue then is whether decisions made by such members of the city staff who are involved in negotiations with IDM for the construction of the shopping center will have a reasonably foreseeable material financial effect on IDM or the limited partnership it controls.

An official has disqualification obligations with respect to any business entity which is a parent, subsidiary, or otherwise related entity to one in which the official has an economic interest. (Regulation 18706, copy enclosed.) The limited partnership and IDM are related entities because IDM has a controlling ownership interest in the limited partnership and there is shared management and control between the two entities. (Regulation 18236, copy enclosed.) Accordingly, city staff members who have invested more than \$1,000 in the limited partnership must disqualify themselves if the decision will have a material financial effect on the related business entity, IDM. (Regulation 18236, copy enclosed.)

To require disqualification, the effect of a decision must be material. Regulation 18702.1(a)(2) (copy enclosed) provides that the effect of a decision on a business entity in which an official has an investment interest of \$1,000 or more is material if the business entity is "directly involved" in the decision and the business entity is not listed on the stock exchange.

A business entity is "directly involved" in a decision if (1) it initiates the proceeding in which the decision will be made by filing an application, claim, appeal, or similar request; or (2) it is a named party in, or is the subject of, the proceeding concerning the decision before the official's agency. (Regulation 18702.1(b).) A business entity is the subject of a proceeding if the decision involves the issuance, renewal, approval, denial or revocation of any license, permit, or other entitlement to, or contract with, the business entity. (Regulation 18702.1(b).)

Applying these guidelines to your facts, we conclude that IDM is directly involved in decisions before the city. Therefore, the effect of the decisions regarding negotiations with IDM for the construction of the shopping center is material. (Regulation 18702.1(a)(2).) Accordingly, because a material financial effect on IDM also is considered a material financial effect on IDM's related business entity, the limited partnership, staff members


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who have invested \$1,000 or more in the limited partnership may not participate in negotiations with IDM.

Should you have any further questions regarding this matter, do not hesitate to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: Blanca M. Breeze
Counsel, Legal Division

KED:BMB:plh

Enclosures

FPPC

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RICHARD D. JONES
Attorney at Law

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OF COUNSEL
RICHARD D. JONES
THEODORE A. ANDERSON
COSTAS A. LADIKOS

November 10, 1989

FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 800
Sacramento, CA 95814

Dear Sir or Madam:

Please be advised that I am City Attorney for the City of Westminster.

The City of Westminster is currently negotiating with a retail developer within a redevelopment area for the construction of a large retail shopping center within the City.

It has been determined that many members of the City of Westminster staff have exercised the right to defer a portion of their compensation which is then administered by a deferred compensation group who make investments on behalf of the employees under the deferred compensation plan.

The developer is IDM Retail Development Corporation which has offered a public offering on a \$40,000,000.00 limited partnership in which IDM then invests the money earned in retail shopping centers and other projects the corporation develops. As those projects are then developed and the permanent financing obtained the limited partnership investors are then paid back. Typically there is a four (4) to six (6) year turn around time period from the time of the initial investment until repayment of the investment.

The investors do not know which specific retail development projects the corporation will invest the money in and have no say either in the nature of the investment nor in the management of the limited partnership.

Some employees have as much as \$10,000.00 invested in the limited partnership through the deferred compensation plan.

The question is whether or not this creates a potential conflict of interest by having the employees invested in a deferred compensation plan which is investing in the IDM limited partnership while at the same time negotiating with

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IDM for the developemnt of a retail shopping center in the City of Westminster.

It is unknown and will not be within the control of the investors as to whether or not IDM does invest any of the \$40,000,000.00 from the limited partnership in any specific project within the City of Westminster.

We would ask you to issue an opinion letter at your earliest convenience.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Richard D. Jones", written over a large, stylized circular flourish.

RICHARD D. JONES

RDJ:kjf

cc: Jerry Kenny



California Fair Political Practices Commission

November 20, 1989

Richard D. Jones
Attorney at Law
690 South Brea Boulevard
Brea, CA 92621

Re: Letter No. 89-657

Dear Mr. Jones:

Your letter requesting advice under the Political Reform Act was received on November 15, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blance Breeze an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
General Counsel

KED:plh